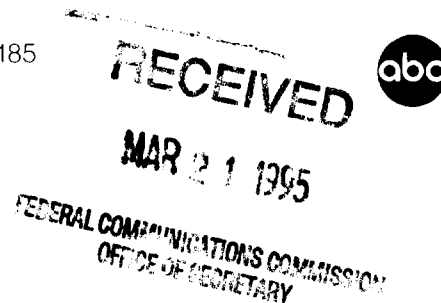


Capital Cities/ABC Inc. 77 West 66 Street New York NY 10023 (212) 456 7185

Dvora Wolff Rabino
General Attorney
Law & Regulation



March 21, 1995

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: WT Docket No. 95-5

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Comments in WT Docket No. 95-5.

Please contact me if you have any questions about this filing.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dvora Wolff Rabino".

Dvora Wolff Rabino

DWR/cs
Enclosures

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OFFICE OF SECRETARY

In the Matter of)
Streamlining the Commission's Antenna)
Structure Clearance Procedure)

and)

WT Docket No. 95-5

Revisions of Part 17 of the)
Commission's Rules Concerning)
Construction, Marking, and)
Lighting of Antenna Structures)

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COMMENTS OF
CAPITAL CITIES/ABC, INC.

Dvora Wolff Rabino
General Attorney, Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

Robert Niles
Director of Engineering, Owned Television Stations

Kenneth J. Brown
Manager, Allocations and Licensing
Broadcast Operations & Engineering

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WT Docket No. 95-5

**COMMENTS OF
CAPITAL CITIES/ABC, INC.**

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits these comments in response to the Commission's Notice of Proposed Rulemaking, WT Docket No. 95-5, released on January 20, 1995 (the "Notice").

Capital Cities/ABC is the owner and operator of the ABC Television Network, eight broadcast television stations, and 21 radio stations. Our company and its owned stations hold licenses to hundreds of antennas. Some of these antennas are located on structures that we own; other are located on structures that we lease space on but do not own. Often we are one of several broadcasters that jointly lease space on a

single structure, such as the World Trade Center (New York), Sears Building (Chicago), or Shoreview Tower (Minneapolis). Our interest in this proceeding is to ensure that rules regarding the construction, marking, lighting and registration of antenna supporting structures are workable from the perspective of broadcasters such as ourselves.

ISSUES PRESENTED

In its Notice the Commission requests comments on a proposal to shift primary responsibility for antenna structure lighting, painting and maintenance to structure owners but to have licensees remain secondarily responsible; a proposal to amend and update the substantive painting and lighting requirements; and a proposal for uniform, streamlined antenna structure registration procedures.

SUMMARY OF ARGUMENT

We support the Commission's effort to shift primary responsibility for painting and lighting their antenna supporting structures, as required for aviation safety, to antenna structure owners.¹ It is the owners, and not any one of the many broadcasters that may lease space on the structure, that enjoy the legal rights and actual access necessary to monitor and correct any conditions that could create a hazard for aircraft. We also agree that antenna

¹ Notice ¶ 1.

licensees should be secondarily responsible for the structures and should attempt to correct noncompliant conditions "[i]n the event of default by the owner." However, we suggest that licensees be relieved of their secondary responsibility if they do not have the legal right to carry out their responsibility. This will avoid putting licensees in the legal quandary of having an obligation under Commission rules to do something that they may have no right or power to do. (See Point I, infra.)

We oppose the Commission's proposals to incorporate periodic Federal Aviation Administration circulars as absolute across-the-board requirements for all existing as well as future antenna supporting structures. We believe that the FAA should continue to decide on a case-by-case basis how to process individual antenna support structure hazard determinations. (See Point II, infra.)

Finally, we support the Commission's goals of streamlining the antenna structure clearance process. However, based on our experience with the existing process, we believe the proposals should be fine-tuned to make the process as efficient and accurate as possible. (See Point III, infra.)

ARGUMENT

I. LICENSEES SHOULD HAVE SECONDARY RESPONSIBILITY FOR PAINTING, LIGHTING AND MAINTAINING ANTENNA STRUCTURES ONLY IF THEY HAVE THE LEGAL RIGHT TO FULFILL THAT OBLIGATION.

The Commission proposes in its Notice that "primary" responsibility for painting, lighting and maintaining antenna structures should be shifted to the antenna structure owner.² In making this proposal, the Commission correctly acknowledges that individuals now responsible for maintenance may "neither own nor have a legal right to maintain the structure."³ In spite of this acknowledgment, the Commission continues to require antenna licensees that do not own the antenna structure to be secondarily responsible for its maintenance, saying in numerous proposed rules some variant of the following: "In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting." (Emphasis added.)⁴

We agree with the Commission's proposal to give the owner of an antenna structure primary responsibility and the licensee secondary responsibility for the structure's

² Notice ¶ 7.

³ Id.

⁴ Notice ¶ 21; proposed Rules 17.6, 21.111, 22.365(a), 23.39(b), 25.113(d), 73.1213(b), 74.22, 78.63, 80.110, 87.75, 90.441, 94.111.

painting, lighting and maintenance. However, we believe that the licensee's secondary responsibility should be conditioned on it having the access and legal right necessary to fulfill that obligation. Unless the licensee is given access to the antenna structure or installs expensive remote monitoring equipment, it will not necessarily know that the owner is in default. Moreover, even if the problem is sufficiently obvious and the licensee sufficiently alert that the licensee learns of the default, the licensee may have no right under its lease and may not be able to get permission from the landlord through negotiations to enable it to correct the problem. The landlord that by definition has already defaulted on legal obligations imposed by the government should not be assumed to be sufficiently responsible and flexible to be cognizant of its default and to allow its tenants the access needed to rectify the problem. Accordingly, the non-owner licensee that makes a good-faith effort to correct a noncompliant condition but is prevented by its landlord from doing so should have some recourse against the recalcitrant landlord or should be excused from responsibility under these rules.

Other proposed rules compound the problem of diffuse responsibility. For example, proposed Rule 22.365(b) provides that while the antenna structure owner "is primarily responsible for compliance" with Part 17's tower painting and lighting requirements, "[e]ach antenna structure owner or

licensee authorized to transmit from a given antenna structure may enter into a contract with an entity to monitor and carry out necessary maintenance of the antenna structure." This provision again does not address the licensee's frequent legal incapacity and practical inability, as a mere tenant, to give such a contractor the access it would need to do the contemplated monitoring and maintenance. Moreover, it leads to a potentially chaotic situation whereby numerous different entities could be attempting to monitor and correct lighting and painting problems on a single structure.

Proposed Rule 17.2(d) is problematic for related reasons. Under this rule, the "antenna structure owner" would be defined as "either the entity that owns the structure or the entity designated by the owner to maintain the antenna structure in accordance with this part." (Emphasis in original.) This could leave licensees uncertain about who is responsible for resolving a problem and may force them to deal with multiple entities in an attempt to find the responsible party.

II. SUBSTANTIVE PAINTING AND LIGHTING REQUIREMENTS SHOULD REMAIN UNCHANGED.

The Commission also requests comment on the advisability of incorporating into Part 17 by reference all existing and future FAA Advisory Circulars, and requiring existing structures that comply with the painting and lighting requirements currently embodied in Part 17, or, presumably,

which do not comply with current Part 17 rules because of prior specific FAA recommendations, to make any additional adjustments necessary to comply with the guidelines in those circulars within ten years.⁵ We oppose this proposal as currently framed. The FAA Advisory Circulars are intended to be general in nature and are not necessarily applicable to every antenna structure. The FAA has applied and continues to apply marking and lighting requirements on a case-by-case basis. Requiring automatic, across-the-board compliance with new guidelines would remove from the process the FAA's expertise and its sensitivity to the differing circumstances raised by each antenna structure and its environment. It could also result in inadvertent violations of environmental laws or local ordinances. For example, a historical building would not be required by the FAA to install bright flashing white strobe lights that would be prohibited under landmark preservation laws. Similarly, lighting requirements at Mount Wilson, California were developed by the FAA with attention to the needs of the Mount Wilson Astronomical Observatory, which could not function effectively with strobe lights nearby. Accordingly, we believe the Commission should not mandate lighting changes without recognizing the FAA's continued involvement in making decisions about appropriate requirements for particular structures.

⁵ Notice ¶¶ 18-19; proposed Rules 17.17(a), 17.23, 17.25.

We also oppose the proposal that voluntary lighting of an antenna structure will be unauthorized unless "lighted and maintained in accordance with the requirements" of Part 17.⁶ This proposal again does not take into account the differing circumstances of each particular structure. For example, while Part 17 would require lights to be at the structure's very top, some structures have antennas atop them that will not support the weight of a light, and in any case lightning rods generally must stick up a couple of feet above the top light. Therefore, owners of antenna structures not required to be painted or lit should continue to enjoy some discretion as to how to paint or light their structures if they elect to do so.

**III. THE PROPOSED REGISTRATION PROCESS SHOULD
BE REFINED TO MAKE IT MORE EFFICIENT AND
TO MAKE ITS RESULTS MORE ACCURATE.**

The Commission has requested comment on a proposed new registration process whereby all owners of antenna structures requiring FAA notification would be required to file a registration application with the Commission for each applicable existing or proposed antenna structure.⁷ We support that proposal but have several suggestions to make the process as efficient, and the result as accurate, as possible.

⁶ Notice ¶ 16(a); proposed Rule 17.26.

⁷ Notice ¶ 8.

First, the proposed rules properly place the onus of registration on the antenna structure owner and appropriately require the owner to provide a copy of the registration to all prospective and existing tenant licensees.⁸ However, the Notice suggests that each licensee or permittee will be required to file a copy of the registration in its station records and to list the applicable registration number upon application for a new, modified, or renewed authorization.⁹ This is a sensible requirement provided that the structure owner has done what it was supposed to do. However, if the owner does not know or care about its filing obligations or neglects to supply copies of the registration to existing or future tenants, the licensee should have some recourse against the structure owner.

A mechanism should also be developed for dealing with errors in current licenses that may surface when the new registration requirements are imposed. For example, if the antenna structure owner, in preparing to fill out its registration application, has new surveying done or uses new mapping that shows that the structure's height or location is slightly different than originally thought, it may submit tower height or location data in its registration form that is in effect a correction of prior FCC and FAA filings by the licensees and that could therefore impact the FAA's no-hazard

⁸ Notice ¶ 9.

⁹ Notice ¶ 9.

determination, class of station, power permitted, or required antenna performance. We propose that the Commission set forth procedures for making and responding to such corrections.

The Commission proposes that the antenna structure registration number be "displayed in a conspicuous place so that it is readily visible from the base of the antenna structure" and proposes that the posting be required to be weather-resistant.¹⁰ This rule should be clarified insofar as it applies to multi-story office buildings, hotels, apartment buildings and other buildings with antennas on their roofs or on a rooftop tower. Is the "base" of the antenna structure the building's ground floor or the bottom of its roof or rooftop tower?

The Commission proposes that existing as well as prospective antenna structures requiring FAA approval be registered.¹¹ This would be helpful in creating a complete database but could create certain logistical difficulties, especially concerning old buildings not previously supporting antennas. Registrants of preexisting structures should not have to identify the date the structure was constructed (item 2 on FCC Form 854) and should not have to determine whether notice of construction or alteration was filed with the FAA (item 9 on the same form) as such information may be difficult to obtain years or even decades after the building was

¹⁰ Notice ¶ 8; proposed Rule 17.5(c).

¹¹ See Notice ¶ 8.

constructed. In addition, existing buildings that are newly used for antennas cannot be expected to have registered "prior to construction"¹²; registration prior to the use of the building as an antenna structure should suffice.

The Commission proposes to require that each structure within an AM directional array be separately registered.¹³ There are two problems with this proposal as framed. First, it can be burdensome to derive a separate set of coordinates for each tower in an array, and inordinately expensive to pay a separate registration fee for each. Second, within a single array there may be tall towers that have to be painted and lit and shorter towers that do not because of the presence of the adjacent taller towers; disassociating them from one another should not be construed as creating new lighting, painting and registration requirements for the shorter towers.

In response to the request in paragraphs 16(a)-(i) for comment on specific aspects of the registration of antenna structures and maintenance of a registration database, we suggest the following.

(a) The Commission asks whether to require registration of antenna structures that are painted or illuminated by their owners although FAA rules do not require them to be painted or illuminated. Such registration of voluntarily painted or illuminated structures would be helpful in that it would

¹² See Notice ¶ 13.

¹³ Notice ¶ 12 n.23.

facilitate the processing of later licenses and modifications by creating a registration record and number for future reference.

(b) The Notice also requests comments on what information should be included in the new registration database and how and to whom it should be made accessible. We believe the database should be available to the public via on-line access and should include all the data submitted in the registration application. This will enable all interested parties to determine easily and conveniently, as needed, the status of a given antenna structure.

(c) In response to the Commission's questions about whether owners should be allowed to register electronically, we believe allowing electronic registration -- as opposed to electronic viewing of registration data -- is unnecessary. In addition, it could make the data more susceptible to manipulation by computer hackers.

(d) In response to the Commission's question about requiring periodic renewal of antenna registration, we recommend that renewal be required at ten-year intervals to help keep the data base current and accurate. The Commission should send antenna structure owners renewal reminders with or on the necessary form, as the Private Radio Bureau has done for years to its licensees, to ensure that building owners do not forget to file. We suggest that the renewal form be kept very simple; it should ask simply whether the structure still

exists and whether any information incorporated in the last filing has subsequently changed, and should request additional details only if the answer to either question is yes.

(e) As for a registration fee, we have no objection, provided that AM directional antenna stations are not required to register each tower in the antenna array separately.

(f) In response to the Commission's question about the advisability of registering all antenna structures with the Commission, this has the advantage of a consistent and complete database that will ensure that licensees have a registration number for more of the applications they file. With a less complete database, licensees would have to explain that they had no antenna structure registration number for certain new or modified antennas because registration of the antenna structures was not required.

(g) In response to the Commission's question about how to notify antenna structure owners of their obligations to register, paint and light their structures, we propose that the licensee of the first expiring license on the structure be held responsible for notifying the structure owner in connection with renewal of its own antenna license. The Commission may not otherwise know who the structure owners are and how to reach them. Such notice through the licensee is likely to be far more effective than notice by mere publication, since real estate investors and landlords probably do not make a habit of reading the Federal Register.

(h) In response to the Commission's concerns that the proposals in this Notice may necessitate changes in its environmental rules, we are aware of no such changes that would be necessary. However, in considering any overly general updating of marking requirements, the Commission should keep in mind that some existing antenna structures may well be on buildings of historical significance.

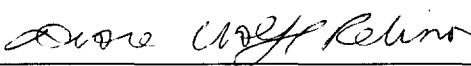
(i) The Commission asks whether owners should be required to specify the location of their antenna structures to the nearest second and their height to the nearest meter since licensees provide similar antenna structure location information in their application forms. This would be a good and a practical idea, except that clarification will be needed. The rules should specify how to identify coordinates for a single building that may be several seconds by several seconds as measured by its outer walls and that may have a number of antennas, earth stations, and even towers located at different places and at varying heights on its rooftop and wall surfaces. The Commission will need to explain whether antenna structure owners should give a range of coordinates for the building or should specify the coordinates for each antenna located on the structure. The Commission should also explain whether licensees should continue to use the precise coordinates they have been using for their antennas or change them to make them potentially less precise but more consistent with the coordinates registered by the antenna structure

owner. Requiring licensees to change coordinates in ways that would make them less precise could create conflict with such Commission directives as Rule 73.207 (specifying the minimum distance separation between FM stations), Rule 25.151(c)(6) (regarding earth stations), and the instructions for FCC Form 313, Item 8 (regarding broadcast auxiliary).

CONCLUSION

For the foregoing reasons, Capital Cities/ABC recommends that licensees be held secondarily responsible for lighting, painting and maintaining antenna structures that they do not own only if they have the legal right necessary to fulfill that obligation; that substantive requirements for painting and lighting of antenna structures remain subject to the FAA's case-specific determinations of hazards; and that any new antenna structure registration procedures be as feasible and as precisely formulated as possible.

Respectfully submitted

By: 

Dvora Wolff Rabino
General Attorney, Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

Robert Niles
Director of Engineering, Owned Television Stations

Kenneth J. Brown
Manager, Allocations and Licensing
Broadcast Operations & Engineering

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